



April 24, 2001

Ms. Regina T. Grimes
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 13401
Austin, Texas 78711

OR2001-1628

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146352.

The Texas Department of Criminal Justice (the “department”) received a request for information regarding the frequency of drive-by checks performed for sex offenders by department parole officers in various Travis County halfway-house facilities between June 1, 2000 and September 30, 2000. The requestor also seeks information about how frequently such offenders were not present at their approved locations during such drive-by checks. Finally, the requestor asks for a listing of categories of information which were found to be excepted from disclosure in an earlier decision of this office.¹ You inform us that the listing of categories of information is being made available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.² We have also considered the comments submitted to this office by the requestor. *See* Gov’t Code § 552.304.

¹*See* OR2000-3792 (2000).

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision Nos. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the department holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure.

We understand the requestor in this case to be seeking aggregated data. The department, however, has submitted information to this office that it asserts is responsive to the request, but which is not in aggregated form. We therefore assume that the department does not maintain records of aggregated information in the form requested, and by providing this office with the submitted information, it is making "a good faith effort to relate a request for information to information the governmental body holds." We will next consider your raised exceptions for the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including section 508.313 of the Government Code. Section 508.313 states:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or

privileged and must be made available for public inspection at any reasonable time.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

- (1) the governor;
- (2) a member of the board;
- (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or
- (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

- (1) a government agency, including the office of a prosecuting attorney;
- (2) an organization with which the department contracts or an organization to which the department provides a grant; or
- (3) an organization to which inmates are referred for services by the department.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

A releasee is a person released on parole or to mandatory supervision. Gov't Code § 508.001(9). As you assert that the submitted information consists "of pages included in release plan records obtained and maintained by the Board of Pardons and Paroles that relate to releasees," we agree that the submitted information is made confidential by section 508.313(a)(2). The requestor here does not appear to be an entity authorized to obtain the submitted information under section 508.313(c). Nor does the submitted information appear to be made public under section 552.029 of the Government Code,³ *see*

³Section 552.029 provides that, notwithstanding sections 508.313 or 552.131, certain information *about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice* is subject to required disclosure under the Public Information Act.

Gov't Code § 508.313(f), or under chapter 62 of the Code of Criminal Procedure⁴, *see* Gov't Code § 508.313(g). We therefore conclude that the information is excepted from disclosure in its entirety under section 552.101 of the Government Code and must not be released to the requestor. As we resolve your request under section 552.101, we need not address your argument under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

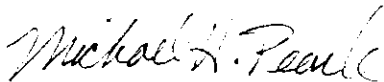
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

⁴Chapter 62 of the Code of Criminal Procedure relates to the registration of sex offenders and provides at article 62.08 that registration information is to be maintained by the Department of Public Safety in a central database which, with certain exceptions, is public information.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 146352

Encl. Submitted documents

cc: Mr. Mark Grayson
9212 Meadow Vale
Austin, Texas 78758
(w/o enclosures)